

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LLOYD J. FLEMING, )  
)  
Plaintiff, )  
)  
v. ) Civil Action No. 12-0330 (RJL)  
)  
RICHARD COWARD *et al.*, )  
)  
Defendants. )

MEMORANDUM OPINION

*August 20*  
*July*, 2012)

Plaintiff, proceeding *pro se*, filed this action in the Superior Court of the District of Columbia against multiple defendants, including federal and District of Columbia employees. The named federal defendants, Arun C. Williams and Patrick Assouad, removed the case to this Court on March 1, 2012, because plaintiff appears to allege in his amended complaint that his patent application was rejected.<sup>1</sup> *See* Notice of Removal of a Civil Action [Dkt. # 1] ¶ 3. The federal defendants now move to dismiss the complaint under Rules 8(a), 12(b)(1), 12(b)(3), 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure or for summary judgment under Rule 56. *See generally* Mot. to Dismiss [Dkt. # 24].

Plaintiff has not refuted defendants' evidence showing that he has not exhausted his administrative remedies with regard to his patent application, *see generally* Decl. of Brian Hanlon [Dkt. # 24-1], and the exhaustion of administrative remedies is a jurisdictional

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<sup>1</sup> The complaint presents no facts implicating Williams and Assouad in any misconduct and, thus, is considered to be brought against them in their official capacity as patent examiners at the U.S. Patent and Trademark Office. *See* Notice of Removal ¶ 2.

prerequisite to filing a civil lawsuit arising from the denial of a patent. *Leighton v. Coe*, 130 F.2d 841, 842 (D.C. Cir. 1942); *see Bullard v. United States*, No. 09-1670, 2009 WL 2872739, at \*1 (D.D.C. Sept. 2, 2009) (“The plaintiff has not received a decision from the Board of Patent Appeals and thus this Court does not have jurisdiction over this action in the absence of a final agency decision, pursuant to 35 U.S.C. § 145 and 5 U.S.C. § 704.”) (quoting *Field v. Manbeck*, No. 90-1030, 1990 WL 116818, at \*3 (D.D.C. Aug. 2, 1990)). Hence, the Court will grant the federal defendants’ motion to dismiss under Rule 12(b)(1) for lack of jurisdiction and remand the case to Superior Court pursuant to 28 U.S.C. § 1447(c) (2006). A separate Order accompanies this Memorandum Opinion.

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RICHARD J. LEON  
United States District Judge